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MCLE SELF-STUDY

California Community Redevelopment Law & Affordable Housing

By Catherine A. Rodman, Esq.*

Community Redevelopment Law's (CRL's) affordable housing requirements are modest, simple and few. And compliance with them is key to the long term success of redevelopment. Despite this, many redevelopment "agencies" fall short. This article reviews the major components of the three principle affordable housing requirements, and the executive and judicial interpretations of them. Given the significant resources dedicated to, and the tremendous need for, affordable housing, public and private enforcement will likely continue until greater compliance is achieved.

MINIMUM AFFORDABLE HOUSING REQUIREMENTS

Almost a quarter of a century after state redevelopment began, the legislature amended CRL to mandate three minimum housing requirements. Agencies must:

1. Replace, within four years, every housing unit occupied by very low, low or moderate income households, that is destroyed or removed from the housing market as part of a redevelopment project;
2. Assure that minimum percentages of all housing developed within the project area is affordable to very low, low and moderate income households; and
3. Set aside at least 20% of the tax increment

allocated to the agency, and other revenue, in a separate Low and Moderate Income Housing Fund, and spend the Housing Fund to increase, improve and preserve the community's supply of affordable housing.

Affordable Housing Production Requirements

In 1975, state lawmakers set minimum affordable housing production requirements for replacement and inclusionary housing in project areas adopted or expanded on or after January 1, 1976.²

Replacement Housing Requirement- Section 33413 (a) requires that whenever dwelling units housing low- or moderate-income persons or families are destroyed or removed as part of a redevelopment project, the agency shall, within four years, develop or cause to be developed an equal number of replacement dwelling units, with an equal or greater number of bedrooms, at affordable housing costs to households of low- or moderate-income. Units are considered destroyed or removed as part of a redevelopment project if the project is subject to a written agreement with the agency or where financial assistance has been provided by the agency.

The term "low- and moderate-income" includes the following three income groups: very low, low and moderate. Households in these categories make no more than 50%, 80% and 120% of area median, respectively.³ Area

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median income is increased approximately annually, calculated separately by County, and adjusted for household size.

Because the original replacement housing requirement did not set separate goals for each income category, housing occupied by the very-low income was destroyed and replaced with units for the low or moderate income. To remedy this, the Legislature amended section 33413(a). From September 1, 1989, on, 75% of the replacement units must be affordable to the very-low, low, and moderate income in proportion to the income levels of those displaced. A second amendment, effective January 1, 2002, requires 100% of the replacement dwellings to be affordable to persons in the same or lower income category than those displaced.

Historically, this replacement housing requirement only applied to redevelopment projects for which a final redevelopment plan is adopted on or after January 1, 1976, and to areas which are added to a project area by amendment on or after January 1, 1976. Effective January 1, 1996, the replacement requirement was made applicable to older project areas, irrespective of the date of adoption of the final plan or amendment.⁴

Under CRL, an agency has the option of replacing units by either constructing new, or rehabilitating existing, housing. The State Department of Housing and Community Development (State HCD)⁵ only allows certain rehabilitated units to be counted toward an

agency's replacement obligation. In order to be counted, the rehabilitated units must add to the housing stock by bringing formerly boarded up units back on the market, and not simply upgrading currently occupied units.⁶ Agencies also have the option of replacing lost units with a lesser number of units, provided that an equal or greater number of bedrooms are provided.⁷

When the removal of low-or moderate-income housing displaces residents, the agency has obligations to assist them before and after displacement. A replacement housing plan (§33413.5) and a relocation plan (§33411) which assure the provision of state relocation benefits and assistance to displacees (§33415) must be adopted, and the required assistance and benefits must be provided, before displacement. Displacees are given priority for the replacement units.⁸

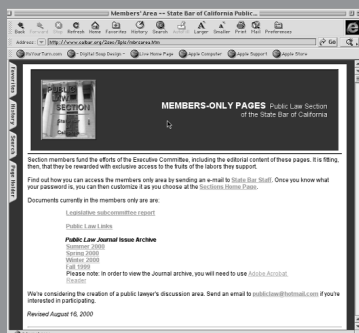
Inclusionary Housing Requirement- CRL requires that in project areas for which redevelopment plans were adopted, or in areas which are added to existing project areas, on or after January 1, 1976, at least 30% of all new or rehabilitated dwelling units developed by an agency shall be affordable to and occupied by low and moderate income persons and families, with at least 50% of those dwellings affordable to and occupied by the very-low income.⁹ Of dwelling units built or rehabilitated by other public entities or the private sector at least 15% must be affordable to and occupied by low and moderate income households, with at least 40%

of these units affordable to and occupied by the very low income.¹⁰ Since the legislature used the word "or" in the phrase "new or rehabilitated dwelling units" in section 33413, subdivisions (b) (1) and (2), the percentage requirements must be satisfied separately for new units and for rehabilitated units.¹¹ Not every residential development in the project area must include the above percentages of affordable units. The requirement may be met in the aggregate rather than project by project.¹²

Effective January 1, 1994, the inclusionary requirement was amended. Subdivision (b) was amended to apply the percentage inclusionary requirements for both agency and other developers to all new "and substantially" rehabilitated dwelling units. Use of the conjunctive "and" allows aggregation of all units for purposes of calculating the inclusionary requirement. Only counting "substantially" rehabilitated units excludes minor and moderate rehabilitation from the total number from which the inclusionary obligation is calculated, thus reducing the number of affordable units required. And "substantial rehabilitation" is very conservatively defined as 25% of the after-rehabilitated value of the dwelling, including land.¹³ The inclusion of land value in the equation further reduces, if not eliminates, any inclusionary requirement for rehabilitation projects undertaken in or after 1994.

Subdivision (b) was further amended to permit agencies to meet the inclusionary

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requirements by purchasing long term affordability covenants which ensure that otherwise unaffordable, existing units are affordable to very low or low income households for not less than 30 years.¹⁴ No more than 50% of an agency's inclusionary requirement may be satisfied by price restricting existing housing units.¹⁵

These amendments also authorize the provision of two inclusionary units outside the project area, for each unit that otherwise would have been required within the project area (§33413(b)(2)(A)(ii)), and the aggregation of inclusionary units in one of multiple project areas, if the agency finds, based on substantial evidence, that the aggregation will not cause or exacerbate racial, ethnic or economic segregation (§33413(b)(2)(A)(v)). Finally, the amendments require that the inclusionary obligations be met every ten years.¹⁶ Before, agencies had the entire life of the redevelopment plan in which to provide the required inclusionary units.

Since the 1994 amendments were not made retroactive, they only apply to inclusionary obligations generated from 1994, on. From 1976 through 1993, agencies and other developers are required to calculate their inclusionary obligations pursuant to the statutory language then in effect.¹⁷

Durational Requirement- Both replacement and inclusionary units must be deed restricted for "the longest feasible time" i.e. in perpetuity (Section 33413, subdivision (g)), but not less than the period of the land use controls established in the redevelopment plan. Effective January 1, 2002, the minimum duration of affordability is extended to 55 years for rental and 45 years for owner-occupied units.¹⁸

The above replacement and inclusionary requirements are independent.¹⁹ Agencies may not double-count one affordable unit as meeting both requirements.²⁰

MAINTENANCE AND USE OF THE LOW AND MODERATE INCOME HOUSING FUND

Adequate Capitalization of the Housing Fund

The Set-Aside Requirement- For all redevelopment plans adopted on or after January 1, 1977, no less than 20% of all taxes allocated to the agency, pursuant to Section 33670, must be set aside in a separate Low and Moderate Income "Housing Fund" and spent exclusively to expand the community's supply of affordable housing.²¹ The minimum 20% set-aside requirement was later made applicable to older and merged project areas as well. Project areas adopted before January 1, 1977, had to set-aside

money for housing from 1985-86, on.²² Merged project areas have been subject to the set-aside requirement since they were authorized in 1980.²³

Agencies are required to set aside at least 20% of all taxes allocated from each project area. Since agencies "pass-through" some of the tax increment allocated to them, some agencies fail to include amounts paid to other taxing entities when they calculate the minimum 20% to be deposited into the Low and Moderate Income Housing Fund. This is a violation of the statute.²⁴

Other Required Housing Fund Deposits-

The minimum 20% set-aside of tax increment is not the only money which must be deposited into the Housing Fund. If the Housing Fund's future income is pledged to issue debt, then the debt proceeds must be deposited into the Fund in addition to the minimum tax increment.²⁵ In addition, the Housing Fund is entitled to all repayments or other income for loans, advances or grants from the Fund, as well as all interest earned on Housing Fund deposits.²⁶

The Legislature is not only concerned that the proper amount be deposited into the Low and Moderate Income Housing Fund, but also that the Fund be properly spent.

Requirements re Expenditure of the Low and Moderate Income Housing Fund

Every expenditure from the Housing Fund must serve to increase, improve or preserve housing, affordable to very low, low or moderate income persons or families.²⁷

First and foremost the Fund must be used to develop housing. Housing is a permanent structure designed for residential use. This definition includes residential hotels (Section 33334.3, subdivision (g)); the more traditional examples of multi-family housing such as apartments and condominiums; as well as single family homes. The focus is on the structure, not the duration of the tenancy. Therefore, the development of transitional housing is a lawful expenditure of the Fund. However, the Fund cannot be used for the development of emergency shelters.²⁸

The words "increase, improve and preserve" refer to the three types of housing development activity to which every expenditure of the Housing Fund must relate. Increase means to add to the stock, generally through new construction. Conversion of other types of structures to residential use, is another means by which an agency can increase the supply of affordable housing. Improve means to rehabilitate, including minor, moderate and substantial rehabilitation.

While construction of new dwellings and rehabilitation of existing ones are activities commonly understood, the term "preservation", as it is used in Community Redevelopment Law, is a term of art. It does not encompass historic preservation or conservation in general. It is narrowly defined to address a specific problem, preserving publicly assisted units at imminent risk of conversion to market rate, as affordable housing for lower income households.²⁹

Agencies must verify that households to be assisted by the Housing Fund are income eligible, i.e. either very low, low or moderate income (Sections 50093 and 50105)³⁰, and that they will be paying "affordable housing cost" after assistance is given.

Pursuant to section 50052.5, from 1977 to 1989, affordable housing cost was defined as no more than 25% of the assisted household's gross income. Since then, housing costs are "affordable" if they do not exceed the following caps:

Income Category	Rental	Ownership
Very Low (up to 50% AMI)	30% of 50%	30% of 50%
Low (up to 80% AMI)	30% of 60%	30% of 70%
Moderate (up to 120% AMI)	30% of 110%	35% of 110%

Housing costs for renters include rent, utilities and any other related costs and fees. 25 California Code of Regulation §section 6918. Homeowner costs include principal, interest, loan fees, property taxes and assessments, insurance, utilities, water, property maintenance and repairs, homeowner association fees, and space rent.³¹

Subdivision (e) of Section 33334.2 specifies the ways in which the Housing Fund may be used to these ends. The list includes the major steps involved in developing affordable housing, for example buying land, improving the building site, constructing dwellings, etc. Although the law allows the Housing Fund to be spent in a variety of ways, every expenditure must either increase, improve or preserve housing affordable to income eligible households, in accordance with CRL.³²

To date, there are only two reported opinions ruling on the propriety of the use of the Housing Fund, both of which found use of the Fund for "off-site" improvements which have no nexus with an "on-site" affordable housing development violative of CRL.

The first case was a challenge to the validity of a plan to use the Housing Fund to issue \$24 million in bonds, the proceeds of which would be used to construct two overpasses. These overpasses were to provide access to an as yet undeveloped area, the only current plan for

which was a business park. The agency claimed that the Housing Fund could be used because to the extent affordable housing was developed in the accessed area, the “traffic impact fee” would be waived. Since there was no guarantee that any housing would be developed, the court ruled the proposed use of the Fund illegal.³³

The second case sought to recover Housing Fund expenditures on various street improvements unrelated to any affordable housing development. Before trial, the agency acknowledged that all but one of the challenged street works were improper and reimbursed the Fund.³⁴ This left one challenged street work project at trial: a wall, sidewalk, gutter, and lighting stretching one mile along a major corridor. In support of this use, the agency submitted an unverified survey that 60 of the 90 abutting residents were income-eligible, and the testimony of the city manager that there were adverse noise levels, and unsafe walkways for school children given the absence of sidewalks. A \$1 million CDBG grant was obtained to fund the work; but when it proved insufficient, the Housing Fund was tapped to make up the shortfall.³⁵ At trial the agency only introduced evidence of the problem, and no evidence that the street-works “improved” affordable housing.³⁶ Hence, the appellate court found that the required nexus between Fund expenditures and affordable housing did not exist.³⁷

Using the Housing Fund to pay for city and agency staff time and overhead which is unrelated to affordable housing development financed with the Housing Fund is another significant area of abuse.

In order to spend the Housing Fund to develop affordable housing, the Legislature recognized that agencies would incur some planning and general administrative expenses. And so CRL allows a relatively small portion of the Housing Fund to be spent in this way. In making this allowance, the Legislature made clear that it strongly disfavors such expenditures, and has imposed increasingly stricter limitations upon them. If the Housing Fund is to be tapped for planning and general administrative expenses they must be necessary for, directly related and proportionate to the amount of the Housing Fund spent on actual construction, rehabilitation and/or preservation in compliance with CRL.³⁸

Although there are, as yet, no reported cases on this use of the Housing Fund, numerous State HCD Audits have found violations of section 33334.3(d)’s requirement to make an annual determination that the Housing Fund expenditures for planning and administration were necessary.³⁹ Required since 1990, this determination is not satisfied by simply adopting

a budget. Adoption of an annual budget is something every agency is required to do under a separate provision of CRL. Section 33606. Nor is verifying proper use of special funds, like the Housing Fund, generally part of the budget adoption process.

Durational Requirements- When the Housing Fund is used to develop new or substantially rehabilitate rental housing, the assisted units were historically required to be affordable to and occupied by income eligible households for the longest feasible time, i.e. in perpetuity (Section 33413, subdivision (g)), but no less than 15 years. Effective January 1, 2002, the minimum duration of affordability was increased to 55 years. For similar owner-occupied housing, the minimum duration of affordability and occupancy restrictions was 10 years. As of the first of this year, the minimum increased to 45 years.⁴⁰

Ongoing income-eligibility and affordability requirements are ensured through the recordation of covenants and restrictions which run with the land, and thus are enforceable against the current and all future owners of the assisted unit(s).⁴¹

Liability for Underfunding/Misuse- Since the obligation to properly capitalize and use the Housing Fund is an ongoing, public duty, one court of appeal has ruled that there is no applicable statute of limitations.⁴² Alternatively, the delayed discovery rule has been applied to facilitate full recovery for the Housing Fund.⁴³

CONCLUSION

Increasing the supply of low- and moderate-income housing is a fundamental goal of redevelopment. Section 33071. In furtherance of this goal, the legislature imposed minimum affordable housing requirements. Only units destroyed or removed from the low- and moderate-income housing market as the direct result of a redevelopment project must be replaced, and the agency has 4 years in which to do so. Only a fraction of the housing built by an agency, or by others within the project area, must be affordable. Finally, the Housing Fund must be adequately capitalized, and properly spent. By meeting these minimum requirements, agencies can help ensure that redevelopment project areas are balanced, and break the cycle of disinvestment and decline which leads to urban blight, a worthy public purpose indeed.

ENDNOTES

- 1 Public enforcement may take the form of investigation, negotiation and litigation by

the State Department of Housing and Community Development or the State Attorney General. Private enforcement generally takes the form of a petition for peremptory writ of mandate under Code Civ. Proc. § 1085 (a), alone or in conjunction with suit for declaratory relief per Code Civ. Proc. § 1060. The ability to obtain injunctive relief per Code Civ. Proc. § 526a appears to be limited to real property taxpayers, per *Torres v. City of Yorba Linda*, 13 Cal.App.4th 1035, 1046-49 (1993).

- 2 Health and Safety Code section 33413 (a) and (b). All future references are to the California Health and Safety Code, unless otherwise indicated.
- 3 Sections 50093 and 50105.
- 4 Section 33413(d)(1).
- 5 State HCD is the executive agency responsible for oversight and interpretation of CRL’s affordable housing requirements. In that capacity, State HCD publish Memoranda regarding CRL’s requirements, and audit agencies’ affordable housing practices, to ensure compliance with CRL.
- 6 State HCD 09/20/96 Memo RE Statutory Clarification of Redevelopment Housing Requirements, pp.2-3.
- 7 Section 33413(f).
- 8 Section 33411.3.
- 9 Section 33413(b)(1).
- 10 Section 33413(b)(2).
- 11 State HCD 4/93 Memo RE AB 315 - Housing Compliance Plans, p.3, No.7.
- 12 Section 33413(b)(3).
- 13 Section 33413(b)(2)(A)(iv).
- 14 Section 33413(b)(2)(B) and (C).
- 15 Section 33413(b)(2)(C).
- 16 Section 33413(b)(4).
- 17 Fontana Audit, Finding No. 4, pp. 9-11; San Jose Audit, Finding #2, pp. 6-7. State HCD Final Audit Reports are cited in this article by reference to the agency audited and finding number. Copies of the cited and all other final audit reports are available from State HCD, Audit Division, 1800 Third Street, Suite 310, Sacramento, CA 94252-2050. For more information, call Eric Pfost at (916) 445-9763.
- 18 Section 33413(c).
- 19 Section 33413(b)(3).
- 20 State HCD, 4/93 Memorandum RE AB 315 Plans, p.4, No. 9; and Inglewood Audit, Finding No. 2, pp.6-7.
- 21 Sections 33334.2(a) and 33334.3(a).
- 22 Section 33334.6(c).
- 23 Section 33487.
- 24 76 Ops. Cal. Atty. Gen. 137; Fontana Audit, Finding #2, pp. 5-6; and Richmond

Audit, Finding #2, pp. 3-5.
 25 Craig v. City of Poway, 28 Cal.App.4th 319, 332 (1994) ; West Sacramento Audit, Finding #1.
 26 Section 33334.3(b); Fontana Audit, Finding #1, pp.3-4.
 27 Section 33334.2(a).
 28 State HCD 4/14/00 Memorandum; Lancaster Audit, Finding #4, pp.17-19; San Jose Audit, Finding #1, pp. 4-5; Santa Barbara Audit, Finding #1, 3-6.
 29 Section 33334.2(e)(11).
 30 Among these income groups the Housing Fund must be targeted to the very low and low income in proportion to their unmet need, and to families with children in proportion to the presence of non-seniors in the population. Section 33334.4.
 31 25 Cal. Code of Reg. § 6920.
 32 Sections 33334.2(a) and 33334.3(c).
 33 Lancaster Redevelopment Agency v. Dibley, 20 Cal.App.4th 1656, 1663-64 (1993).
 34 Craig v. City of Poway, 28 Cal.App.4th 319, 324 n.2.
 35 Id. at 333.
 36 Id. at 340.
 37 Id. at 341-42.

38 Section 33334.3(d) and (e).
 39 Fontana Audit, Finding #10, p. 21; Morgan Hill Audit, Finding #2, pp.5-6; Richmond Audit, Finding #7, p. 12; Santa Barbara Audit, Finding #4; pp. 11-12; Santee Audit, Finding # 2, pp. 4-5; Signal Hill Audit, Finding # 4, pp. 8-9; West Sacramento Audit, Finding #2.
 40 Section 33334.3(f)(1).
 41 Section 33334.3(f)(2).
 42 Long Beach Housing Action Ass'n v. City of Long Beach, Unpublished Opinion of the Second Appellate District, Division One, Case No. B111931, June 30, 1998.
 43 Craig v. City of Poway, 28 Cal.App.4th 319, 332.

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PROGRAM TITLE	TIME		DAY	CREDIT
• Understanding and Drafting Legislative and Regulatory Language	8:30 a.m.	to 9:30 a.m.	October 11	N/A
• Racial and Ethnic Profiling After 9-11	2:15 p.m.	to 4:15 p.m.	October 11	2 Hrs.
• Public Lawyer of the Year Reception	4:30 p.m.	to 6:30 p.m.	October 11	N/A
• Tort Claims	11:00 a.m.	to 12:00 p.m.	October 12	1 Hr.
• Disclosure Requirements Under the Political Reform Act	11:00 a.m.	to 12:00 p.m.	October 12	1 Hr.
• Celebrating Strength in Diversity: Elimination of Bias in the Legal Profession	4:45 p.m.	to 5:45 p.m.	October 12	1 Hr.

Registration material will be forthcoming from The State Bar.

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MCLE SELF-ASSESSMENT TEST

1. A redevelopment "agency" violates Community Redevelopment Law ("CRL") by counting an affordable unit as satisfying both its replacement and inclusionary requirements?
☐ True ☐ False
2. As of 1/1/02, the required duration of affordability for rental units built or substantially rehabilitated with assistance from the Low and Moderate Income "Housing Fund" is the longest feasible time, but no less than 15 years.
☐ True ☐ False
3. Planning and general administrative costs paid for by the Housing Fund must be necessary for, directly related and proportionate to Housing Fund expenditures to actually build, rehabilitate or preserve affordable housing units in compliance with CRL.
☐ True ☐ False
4. An agency may not substitute debt proceeds for the minimum 20 percent tax increment required to be deposited into the Housing Fund.
☐ True ☐ False
5. The Housing Fund may be used to pay for infrastructure which improves a neighborhood where affordable housing may be located in the future.
☐ True ☐ False
6. Low-and-moderate-income residents displaced by a redevelopment project are entitled to a right of first refusal to occupy replacement housing units.
☐ True ☐ False
7. All Housing Fund expenditures must serve to increase, improve or preserve affordable housing for very-low, low or moderate income households.
☐ True ☐ False
8. Adoption of an agency's annual budget satisfies the agency's annual necessity determination, for planning and administrative expenditures from the Housing Fund, required by Health and Safety Code §33334.3 (d).
☐ True ☐ False
9. Agencies have the life of the redevelopment plan to provide the inclusionary units required by Health and Safety Code §33413(b).
☐ True ☐ False
10. Since 9/1/89, a housing unit occupied by a very low income resident and removed from the project area as the result of a redevelopment project must be replaced by a very low income affordable housing unit within 4 years.
☐ True ☐ False
11. Calculation of the minimum 20 percent "set-aside" for low and moderate income housing should be based on the total tax increment revenues allocated to the agency.
☐ True ☐ False
12. An action challenging an agency's misuse of the Housing Fund is always subject to a three year statute of limitation, under Code of Civil Procedure §338(a).
☐ True ☐ False
13. CRL requires that all money belonging to the Housing Fund, including tax increment, debt proceeds, repayments of loans, other income, and interest, be held in a separate Housing Fund until used.
☐ True ☐ False
14. Agencies must verify the income-eligibility and affordable housing cost of each household occupying a housing unit to be assisted by the Housing Fund, before using the Fund to provide assistance.
☐ True ☐ False
15. CRL's affordable housing requirements are enforceable by any "interested party", via a peremptory writ of mandate or taxpayer action.
☐ True ☐ False
16. When providing replacement housing, fewer units can be developed, than the number of units lost, provided that the number of bedrooms provided is equal or greater than the number of bedrooms lost.
☐ True ☐ False
17. The legislature intends for the Housing Fund to be used "to the maximum extent possible" to produce, improve and preserve low-and moderate-income housing.
☐ True ☐ False
18. Increasing the supply of low- and moderate-income affordable housing is a fundamental goal of state redevelopment.
☐ True ☐ False
19. Under CRL, the term "preservation" includes historic preservation.
☐ True ☐ False
20. The Housing Fund may be used to assist in the development and operation of emergency shelters.
☐ True ☐ False

The Use of the Health and Safety Code Receivership Remedy for Substandard Residential Buildings

Promises and Pitfalls

By Robert C. Pearman, Jr., Esq.*

Recent amendments to Health and Safety Code §17980.7(c)^{1,2} serve as a reminder of this seldom used but potentially powerful receivership remedy available to cities and counties, against owners of substandard buildings.

To begin, the condition precedent to invoke the receivership remedy is found in §17980.6.³ It provides in relevant part:

"If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency⁴ may issue an order or notice to repair or abate pursuant to this part. ..."

This requires more than the merest of nuisances (See Civil Code §§ 3479, 3480), and is akin to the substandard building definition in Health and Safety Code § 17920.3.

§ 17980.7 (c) is attractive to advocates of decent and affordable housing, in part because it synthesizes in a favorable context these elements: a receiver can be appointed to

manage such substandard buildings, the receiver may borrow money secured by a lien on that property, and extends this right to petition for such a receiver to tenants and tenant organizations. Further, recent amendments make it clear that non-profit organizations and community development corporations eligible, potential receivers in such cases.

The real promise and attraction of this statute come not only from its express language, but from the common law of receiverships. It has been established that a court, when allowing a receiver to borrow money with a lien on the estate property as security, can grant priority status to that lien. The leading California case is *Title Ins. & Trust Co. v. California Development Co.* 171 Cal. 227, 231 (1915): "there can be no question of the right of the court to give priority to certificates issued to enable the receiver to carry out the primary object of his appointment, viz., the care and preservation of the property."

Thus, an optimistic scenario of how this statute might work is as follows. If an owner has failed and refused to respond to notices and orders to repair a substandard building, one reason may be the simple lack of equity in the property. He or she cannot afford to utilize the property value to further improve it, and may not have independent funds to do so. By having a receiver appointed, who can then borrow money and lien the property, the rehabilitation work might take place.

However, lenders will not come forth if no equity exists and their new loan would be junior to many existing debts. If the court grants the new lender priority over some existing indebtedness, the theory goes, then the rehabilitation project might "pencil out" and be attractive to a lender.

The key elements of § 17980.7 (c)⁵ include the following:

"§17980.7. If the owner fails to comply within a reasonable time with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:...

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists."

(c)(2) "The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building."

A recent amendment to §17980.76 included, among other changes, the addition of two more sentences to subsection (c)(2). It provides that:

"a court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building."

The legislative author of these amendments argued that since substandard buildings are likely to lack equity or sufficient rental cash flow, using non-profits as receivers can create value because they have the ability to apply for and utilize grants to rehabilitate deteriorated properties.⁷ I surmise also that non profits, from a financial standpoint, don't necessarily look like traditional property managers, etc. who often act as receivers in typical rents and profits cases. Perhaps some

judges were loathe to appoint them as receivers under § 17980.7. The fact that they often depend upon grants for funding might make their balance sheets look weaker than judges are used to seeing in property receivers. The amendments make it easier for an interested non profit to act as a receiver where it can show, not only by its own assets but by grants available to non profits, that it could carry out its duties as a receiver.

Subsection(c)(4) states the receiver “shall have all of the following powers and duties in the order of priority listed in this paragraph” They include:

“(A) To take full and complete control of the substandard property.”

“(E) To collect all rents and income from the substandard building.”

The key power is in subsection (4)(G):

“To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder’s office in the county within which the building is located.”

While subsection (c) is the focus of receivership appointment, other elements of § 17980.7 are of interest. Subsection (d) provides:

“(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to Section 17980.6, upon the entry of any order or judgment, the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.”

Perhaps a city could use this subsection in conjunction with an ongoing receivership matter and obtain an order for all such costs to be assessed against the owner. If funds are in the receivership estate, it can immediately present that “bill” to the receiver for payment.

§17980.7(g) provides that the remedies of the statute “shall be in addition to those

provided by any other law”. This serves as a reminder that, at least as to governmental agencies, the powers granted by subsection (c) are not necessarily unique nor exclusive. Having a receiver appointed for a substandard building by using the general receivership authority of CCP § 564 may be possible. For instance, if a city has obtained a contempt order against an owner, it can use CCP §564(b)(3) to have a receiver appointed after the judgment to enforce it. And it seems that the general equity receivership, CCP §564(b)(8), would also be available for a building repeatedly and seriously violating the housing code.

In my experience several pitfalls can occur in practice when attempting to employ §17980.7(c).

1. Property may have too much debt, too many potential claimants and interested holders such that it complicates the efforts to use this remedy. Additionally, while the court can allow supra-priority to the lien securing the new loan to finance the receiver’s rehabilitation work, it’s doubtful that it can override the lien status of existing tax deficiencies at the federal, state and county level. So if those tax liens are present, the rehabilitation still may not pencil out.
2. The novel nature of this remedy may make it difficult to entice institutional lenders to work with an enforcement agency to fund rehabilitation. The expected sequence of events is that the receiver borrows money to perform the rehabilitation, issues a certificate (which is like a promissory note), grants the lender a secured lien on the building as collateral which the court allows to be first priority, the certificate has a short time period for the receiver to pay it - presumably the receiver lacks sufficient funds from the rental income to do so - thus leading the lender to start foreclosure. If the lender becomes the successful credit bidder at the foreclosure sale (hopefully after the necessary rehabilitation has been completed), then it would take title to the property. While that is good in theory, are notoriously conservative institutional lenders comfortable in that situation?
3. The city will also have to devote staff time. Relying solely on the receiver to accomplish the objectives of the statute and the receivership would be dangerous. As plaintiff, the city could face liability if something goes amiss. Some construction

expertise, accounting knowledge to monitor the receiver’s accounting and expenses, city attorney skills, and perhaps marketing ability to help find interested lenders or developers are roles that the city should play.

4. Lastly, the city may turn out either to be a partial funder of the rehabilitation, or becomes the requested lender of last resort to step in and fund the rehabilitation.

I am aware of instances where this remedy has been used with some degree of success. Some jurisdictions dedicate a specific pot of money to fund the rehabilitation, not relying on the private market to fill the gap. Or they use it only for properties with a large amount of equity, thus being attractive to private lenders.

CONCLUSIONS

If a city wants to use this §17980.7(c) receivership remedy, the following are steps that should be taken:

- (a) Make sure that the “substandard building” definition of § 17980.6 is met.
- (b) Make sure that all the due process elements are satisfied, with all lenders, interest holders and potential owners being notified in advance and given reasonable opportunity to abate the substandard conditions.
- (c) Petition for the appointment of a capable receiver, one who is used to dealing with substandard buildings and the tenant issues and potential relocation payments, etc. that such an assignment might entail.
- (d) Develop a substantive, well thought out rehabilitation program with all attendant cost elements.
- (e) Get prospective lenders on board up front, before you even petition for the receiver, so as plaintiff you are confident one will step in and be the lender.
- (f) Be prepared to invest some city funds, at a minimum for interim financing to allow the receiver to fully develop the rehabilitation plan.
- (g) Avoid complex multi-liened properties, and properties with significant tax debt attached to them.
- (h) Be prepared to dedicate some city staff time to monitor the project; don’t rely solely on the receiver.

In short, the promise of a risk-free device, fully funded by the lending community and wholly managed by an active receiver seems unrealistic. However, with the city willingness to commit some staff time and funds, this

remedy can be successful in the right situations.

Endnotes

- 1 Div. 13 Housing, Part 1.5 Regulation of Buildings Used for Human Habitation, Ch.5, Art. 3.
- 2 There is only one reported case that even mentions the statute (City and County of San Francisco v. Daley, 16 Cal.App.4th 734 (1993)) but simply in a footnote stating the section's applicability was not considered.
- 3 All statutory references herein refer to the California Health & Safety Code, unless otherwise indicated.
- 4 Building departments of cities and counties are enforcement agencies. See § 17960 et seq. For convenience, in this article the term "city" is generally used.

- 5 Subsection (c) was patterned after New York State legislation. Chicago, Illinois has used a similar receivership remedy program. San Francisco and Los Angeles have used this California law.
- 6 Stats. 2001, c. 594, AB 1467
- 7 Assembly Floor Analysis 08/09/01, AB 1467 (Kehoe)

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PUBLIC LAWYER OF THE YEAR AWARD 2002

Do you know a public law practitioner who deserves special recognition because of outstanding services to the public?

If so, that person could be the recipient of the Public Law Section's "2002 Outstanding Public Law Practitioner" award because of your nomination.

Each year the Public Law Section honors a public lawyer selected by the Public Law Executive Committee from nominations sent in by members of the Public Law Section, the State Bar, and the public at large.

For the award, the Public Law Executive Committee is looking for an active, practicing public lawyer who meets the following criteria:

1. At least 5 years of recent, continuous practice in public law
2. An exemplary record and reputation in the legal community
3. The highest ethical standards

Rather than a political figure or headliner, the ideal recipient would be a public law practitioner who has quietly excelled in his or her public service. Just as the Public Law Executive Committee supports the goal of ethnic diversity in the membership and leadership of the State Bar, a goal in selecting the 2002 Outstanding Public Law Practitioner will be to ensure that the achievements of all outstanding members of the Bar who practice Public law, especially women and people of color, are carefully considered.

Nominations are now being accepted. The 2002 Outstanding Public Law Practitioner award will be presented at the Annual State Bar Convention in Monterey in September 2002.

Send nominations, no later than 12:00 midnight, June 20, 2002, to:
Mitch Wood, Public Law Section, State Bar of California, 180 Howard Street, San Francisco, CA 94102-4498.

To nominate an individual for this award, fill out the official nomination form below.

Nominee's Name:

Nominator's Name:

Place of Business:

Telephone Number:

Years of Public Law Practice:

Brief Statement why Nominee deserves recognition:

Public Law Section Legislative Report

By Fazle Rab Quadri, Esq., Chair, Legislative Subcommittee, and Brenda Aguilar-Guerrero, Esq.*

Over 5000 bills have been introduced during the 2001-2002 regular legislative session and many more in the special sessions. Some bills reflected new ideas but many were regeneration of prior proposals. The Governor vetoed an entire range of bills mostly because of cost or policy considerations often despite the support by key legislators. A brief summary of the bills of importance to the Public Law Section is included in this report. If you would like additional information such as the complete text, committee analysis, history or voting records, you may view the information on line at www.sen.ca.gov

AB 42, Wayne

Topic: Colorectal cancer.

Last Action: To inactive file.

Summary: This bill would establish the Colorectal Cancer Screening and Treatment Program in the State Department of Health Services.

AB 55, Shelley and Hertzberg

Topic: Elections: voting: reform and modernization.

Last Action: Held in Committee.

Summary: This bill would require county elections officials to send an alternate residency confirmation postcard to any voter who has failed to vote or update his or her registration information for 4 years thereby impose a state-mandated local program.

AB 138, Nation

Topic: Bidding procedures: alternative bids.

Last Action: Re-referred to Com. on L. & I.R.

Summary: This bill would add to the procedures for determining the lowest bidder for specified public agencies to also require

that any information that would identify any of the proposed subcontractors or suppliers is not revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

AB 164, Harman

Topic: Special education: alternative dispute resolution.

Last Action: Re-referred to Com. on Ed.

Summary: This bill would require the State Department of Education to establish and administer a statewide program of grant funding, with specified components, to support special education local plan areas in conducting alternative dispute resolution programs for resolving special education disputes.

AB 167, Longville

Topic: Riverside County absentee ballot program.

Last Action: Vetoed.

Summary: This bill would have provided that the time and motion study developed by Riverside County in 1988 to claim reimbursement from the state for the county's absentee ballot program is valid through December 31, 1999, for the purposes of determining the amounts that Riverside County is entitled to reimbursement by the state.

AB 168, Nation

Topic: Charter schools: funding.

Last Action: Hearing postponed by Com. on Appr.

Summary: This bill would, until July 1, 2005, specify that a charter school shall be treated as a school district for purposes of the State School Fund.

AB 177, Liu

Topic: Pupils: expulsion.

Last Action: Vetoed.

Summary: The bill would have authorized a school district superintendent or the superintendent's designee to extend the suspension of a pupil, to address the academic needs of the pupil by transferring the pupil to an appropriate alternative school placement for remedial instruction or, providing access to instructional materials, assignments, and tests in classes in which the pupil is enrolled, and providing parental notification, as specified.

AB 183, Longville

Topic: Elections: expenses.

Last Action: Vetoed.

Summary: This bill would have eliminated the repeal date for existing law which provides that, except for an election called by the governing board of a city, all expenses authorized and necessarily incurred in the preparation for and conduct of elections are paid from the county treasuries unless the expenses are for an election proclaimed by the Governor to fill a vacancy, as specified, in which case the expenses are paid by the state.

AB 272, Pavley

Topic: Teacher credentialing.

Last Action: Vetoed.

Summary: This bill would have made certain clear multiple or single subject teaching credentials valid for the life of the holder if the holder renders successful service as a classroom teacher in the California public schools for 10 years, completes, after receiving a clear credential, 300 hours of professional growth, and certification by the National Board for Professional Teaching Standards.

AB 295, Strom

Topic: Public Schools Accountability Act of 1999: academic performance.

Last Action: Vetoed.

Summary: This bill would have required that the Academic Performance Index developed by the Superintendent of Public Instruction to include scores on the English language development test.

AB 348, Wright

Topic: Career technical education.

Last Action: Vetoed.

Summary: This bill would have provided that the term "vocational-technical education" shall have the same meaning as "career technical education" and provide that the vocational-technical education course

requirements shall be fulfilled by career technical education courses.

AB 374, Matthews

Topic: Political Reform Act of 1974: slate mailers.

Last Action: Referred to Com. on E. & R.

Summary: The. This bill would repeal the existing Political Reform Act of 1974 prohibition that a slate mailer organization or committee primarily formed to support or oppose one or more ballot measures from sending a slate mailer, unless it contains specified information; and would reenact provisions in effect prior to Proposition 208 requiring that a candidate and a ballot measure that has paid to appear in a slate mailer be designated by an asterisk (*).

AB 400, Simitian

Topic: Ballot designations.

Last Action: Hearing postponed by committee.

Summary: This bill would provide that a candidate's ballot designation as "community volunteer" shall constitute a valid principal vocation or occupation for purposes of existing law, if not otherwise in violation of any of the restrictions set forth in that law.

AB 460, Wyman

Topic: Energy transmission: Path 15.

Last Action: Hearing postponed by committee.

Summary: This bill would require the State Energy Resources Conservation and Development Commission to allocate \$10,000,000 to the Transmission Authority of Northern California for the purpose of funding the environmental studies of Path 15, as defined, subject to the appropriation of funds for this purpose in the annual Budget Act.

AB 468, Firebaugh

Topic: State property: access: telecommunications.

Last Action: Referred to Sen. Coms. on E., U., & C. and Trans.

Summary: (1) This bill would require the Director of General Services to maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless facilities; authorize the lease of certain state-owned real property to any such provider for location of its facilities, and would require that this lease (a) provide for the use of the wireless provider's facilities located on the state-owned real property by

any appropriate state agency if feasible, and (b) facilitate agreements among providers of wireless telecommunications services for collocation of their facilities on state-owned real property. Provide that a wireless telecommunications facility located on state-owned real property pursuant to a lease that meets these requirements would not be subject to the requirements of any local zoning ordinance or regulation. Require that 10% of the revenues from fees collected pursuant to these provisions, except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to January 1, 2003, be available, upon appropriation, to finance Digital Divide projects. (2) This bill would provide that any specified funds from lease agreement on DoT property shall be kept in a separate account and used, upon appropriation, only for transportation-related purposes. (3) Urgency statute.

AB 528, Bill Campbell

Topic: Elections: ballots.

Last Action: Vetoed.

Summary: This bill would have required county elections officials to provide copies of the entire text of qualified school measures to those who request them whenever the entire text of a measure is not contained in the ballot or voter information portion of the sample ballot.

AB 551, Wesson

Topic: Voter registration.

Last Action: To Sen. inactive file.

Summary: This bill would require the governing board of a school district to provide voter registration cards to the parents or guardians of a new pupil at the time the pupil is enrolled in that school district.

AB 572, Firebaugh

Topic: Gaming: licensing.

Last Action: To Sen. inactive file.

Summary: This bill would require, in order for a publicly traded corporation to be eligible to receive a gambling license as the owner of a gambling enterprise, that the corporation meet other additional requirements, and would define a shareholder for purposes of these provisions.

AB 667, Cox

Topic: Initiative petitions: costs to counties.

Last Action: Hearing canceled at request of author.

Summary: This bill would require the state to

reimburse county elections officials for verifying signatures on statewide initiative petitions at a rate of \$.50 per signature if more than 10 statewide initiative petitions are submitted to the county registrar of voters between January 1 of an odd-numbered year and December 31 of the following even-numbered year.

AB 690, Wesson

Topic: Political Reform Act of 1974: campaign expenditures: telephone advocacy.

Last Action: Held under submission.

Summary: This bill would revise specified definition to include instead 200 substantially similar pieces of any item delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box, and would require the item delivered to the recipient to be a tangible item, including, but not limited to, a videotape, audio tape, computer diskette, compact disc, or a written document.

AB 848, Mountjoy

Topic: Overseas ballots: military voters.

Last Action: From committee pursuant to Joint Rule 62(a).

Summary: Existing law permits a citizen residing outside of the United States to register to vote in a federal election if that person was domiciled in California immediately prior to his or her departure from the United States. This bill would extend the time period for the receipt of absentee ballots signed and dated by the day of a federal election, to not later than 10 days after the election.

AB 993, Hertzberg

Topic: Redistricting: Assembly districts.

Last Action: To Asm. inactive file.

Summary: This bill would provide that pursuant to the California Constitution, the districts for the Assembly are to consist of unspecified counties, census tracts, and census blocks.

AB 994, Hertzberg

Topic: Redistricting.

Last Action: To Asm. inactive file.

Summary: This bill would declare the intent of the Legislature to create legislative districts in compliance with the California Constitution, as specified.

AB 995, Hertzberg

Topic: Redistricting: House of Representatives.

Last Action: To Asm. inactive file.

Summary: This bill would provide that

pursuant to the California Constitution, the congressional districts are to consist of unspecified counties, census tracts, and census blocks .

AB 996, Hertzberg

Topic: Redistricting: State Board of Equalization.

Last Action: To Asm. inactive file.

Summary: This bill would provide that pursuant to the California Constitution, the districts for the State Board of Equalization are to consist of unspecified counties, census tracts, and census blocks .

AB 1086, Calderon

Topic: Environmental quality: residential infill development project.

Last Action: Hearing canceled at the request of author.

Summary: This bill would require the preparation of a negative declaration or mitigated negative declaration for any project that is (a) a residential infill development; (b) located within an urbanized area; (c) located within an incorporated city with a population of at least 100,000 persons or an incorporated city of less than 100,000, if the population of that city and not more than 2 contiguous cities combined at least equals 100,000 persons; (d) not otherwise exempt from CEQA, if the lead agency for the project determines that the project is in compliance with specified local requirements, including, any variance that is properly granted pursuant to that zoning ordinance; an EIR was certified on the adoption of that applicable plan, program, or ordinance; the project site is not more than 10 acres in total area and the project proposal contains not more than 200 housing units, or the site of the project is not more than 5 acres in total area; the project can be served by existing utilities; the project site does not contain significant wetlands or have significant value as wildlife habitat; the site is not listed as a hazardous waste facility or site ; the site is subject to a preliminary endangerment assessment to determine hazardous substances; the project does not have a significant effect on any historical resource; and the project is within _ mile of a major transportation node, as defined.

AB 1121, Comm on Gov Org

Topic: Public records: agency guidelines.

Last Action: Referred to Com. on GO.

Summary: This bill would make those provisions of the California Public Records Act, that require an agency to establish

written guidelines for accessibility of records, to post these guidelines at their offices, and to make them available free of charge to any person requesting that agency's records, applicable to the California Gambling Control Commission.

AB 1229, Frommer

Topic: Gambling: prohibited online gambling games.

Last Action: Re-referred to Com. on GO.

Subject matter referred to Com. on RLS.

Summary: This bill would state findings and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate or bet against any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value.

AB 1244, Wiggins

Topic: Affordable housing: condominiums.

Last Action: Re-referred to Com. on H. & C.D.

Summary: This bill would declare the intent of the Legislature to examine methods to increase the supply of housing affordable to all income groups, promote fairness in the distribution of housing, and plan adequately for housing sites that integrate the need for housing with the needs of other land uses.

AB 1265, Bill Campbell

Topic: Powerplants: CEQA.

Last Action: Died at Desk.

Summary: This bill would have declared the intent of the Legislature to enact a program that would stabilize statewide electrical grid reliability by expediting the CEQA process for projects relating to the construction of "clean" or "green" energy powerplants.

AB 1397, Koretz

Topic: Public records: University of California employees.

Last Action: To Asm. inactive file.

Summary: This bill would provide that copies of the name, home address, and home telephone number of an employee of the University of California shall be made available, upon request, to the employee's exclusive representative and any labor organization seeking representation, as specified.

AB 1713, Committee on Elections

Topic: Voting systems: performance benchmark.

Last Action: Referred to Com. on E. & R.

Summary: This bill would state the intent of the Legislature to conform state law to federal election reform legislation in order to establish eligibility for federal funding to upgrade the voting systems, machines, and devices currently in use in elections in California.

AB 1752, Migden

Topic: Public records.

Last Action: Re-referred to Com. on GO.

Summary: The Bagley-Keene Open Meeting Act generally requires that meetings of state bodies, as defined, be conducted openly. This bill would make these requirements imposed on the Franchise Tax Board also applicable to the State Board of Equalization with respect to writings pertaining to any item that does not involve a named tax or fee payer.

AB 1791, Runner and Wyman

Topic: Conflicts of Interest: disclosure.

Last Action: Read second time and amended in Asm E. R & CA

Summary: This bill would prohibit the commission from issuing an order that requires a state or local governmental agency to pay the monetary penalty [of up to \$5,000 per violation] for specified violations of the Political Reform Act of 1974.

AB 1797, Harman

Topic: Conflicts of interest: disqualification.

Last Action: Second hearing canceled at the request of author.

Summary: This bill would require a public official and specified office holders who have a financial interest in a decision within the meaning of the Political Reform Act of 1974 to state publicly the specific nature of the conflict of interest, recuse himself or herself from discussing and voting on the matter, and leave the room until after the discussion, vote, and other disposition of the matter is concluded , except as specified .

AB 1798, Chavez

Topic: Public records.

Last Action: Hearing canceled in GO committee at the request of author.

Summary: This bill would provide that a veteran's service form DD214, and any information obtained therefrom, is confidential and may not be disclosed by any state or local agency to any person unless the person requesting that information provides identification and a valid reason for obtaining that information.

AB 1839, Bill Campbell

Topic: Indemnity: public agency.

Summary: Existing law provides that certain persons under various circumstances may contract or agree to indemnify a person against an act of either party, or of some other person.

Last Action: In Senate. To Com. on RLS. for assignment.

This bill would authorize a public agency to require that an agreement or contract made with a design professional, as defined, include a provision to defend, indemnify, or hold harmless the public agency for the negligence, recklessness, or willful misconduct of the design professional and other persons employed or utilized by the design professional. Would apply to contracts with a design professional made on or after January 1, 2003.

AB 1870, Hollingsworth

Topic: Crime prevention: criminal justice information.

Last Action: Second hearing canceled at the request of author.

Summary: Existing law requires the Attorney General to appoint an advisory committee, with a specified membership, to the California-Criminal Index and Identification (Cal-CII) system, to assist in the ongoing management of the system regarding the operating policies, criminal records content, and records retention. This bill would instead create in the state government the Integrated Justice Information System Task Force to include specified members.

AB 1962, Hollingsworth

Topic: Electronic communication.

Last Action: Hearing postponed by GO committee.

Summary: Existing law relating to evidence in court actions and specified administrative proceedings defines evidence as including a writing, which is defined as handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof. This bill would define writing under these provisions to include electronic mail, electronic correspondence, and facsimile transmissions.

AB 2247, Salinas

Topic: Real estate signs.

Last Action: Asm Jud. Hearing postponed by committee.

Summary: This bill would permit an owner of

real property to display various signs on a public-right-of-way; and extend these provisions to any sign in connection with the sale, lease, or exchange of any other property. The bill would permit an authorized person or city, county, or city and county to regulate the display of a permanent sign on a public right-of-way, or a temporary sign on a private or public right-of-way, that is not in compliance with specified provisions.

AB 2351, Canciamilla.

Topic: Water quality: civil liability.

Last: Read second time and amended. Re-refer to Com. on Jud.

Summary: This bill would authorize the state Water Quality Control Board or a regional board, in lieu of assessing mandatory minimum penalty and with the concurrence of the discharger direct a portion of the penalty amount to be expended on a supplemental environmental project. This bill would require for the purposes of imposing certain mandatory minimum penalties, to construe a single operational upset that leads to violations of one or more pollutant parameters, even if the upset lasts for more than one day, but not more than ____ days, as a single violation. This bill also would make mandatory minimum penalties inapplicable to violations caused by the operation of a new or reconstructed wastewater treatment plant unit or process during a defined period of adjusting or testing, not to exceed ____ days, if certain requirements are met, or, January 1, 2008, to certain violations of effluent limitations for chlorine.

ABX1 55, Rod Pacheco

Topic: Energy: environmental protection.

Last Action: From committee pursuant to Joint Rule 62(a).

Summary: This bill would exempt from the requirements of CEQA any new project to retrofit an existing energy generating facility if the project involves the decommissioning of an existing energy generating facility and will result in a higher wattage facility that emits fewer air contaminants.

ABX1 65, Wyman

Topic: Environmental protection: transmission Path 15.

Last Action: From committee without further action.

Summary: This bill would exempt from the requirements of CEQA any project primarily involving the planning, funding, design, site acquisition, construction, operation, or

maintenance of new or replacement facilities or structures associated with the transmission path known as "Path 15" near Los Banos.

ABX1 76, Leslie

Topic: Energy: environmental protection.

Last Action: From committee without further action.

Summary: This bill would exempt from the requirements of CEQA any activity or approval necessary for the facilities and water rights of Federal Energy Regulatory Commission Project 184, as defined, for hydroelectric power or consumptive uses.

ACR 1, Leonard

Topic: Redistricting: criteria.

Last Action: Hearing postponed by E. R. & CA

Summary: This measure would declare that when the Legislature undertakes its constitutional responsibility to adjust the boundaries of California's State Senate, Assembly, Congressional, and Board of Equalization districts, it do so using specified criteria.

SB 3, Brulte

Topic: Elections: campaign expenditures: telephone advocacy.

Last Action: Re-referred to Com. on Appr.

Summary: This bill would revise specified definition to include instead 200 substantially similar pieces of any item delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box, and would require the item delivered to the recipient to be a tangible item including, but not limited to, a videotape, audio tape, computer diskette, compact disc, or a written document.

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A Message From The Chair

By Joyce M. Hicks, Esq.

The provision of affordable housing is a matter of statewide concern that has been addressed by the California state legislature in several laws including the Health and Safety Code (California Community Redevelopment Law) and the Government Code (California General Plan Law). California Community Redevelopment Law, which is a financing mechanism to eliminate blight in designated project areas through the use of tax increment financing, requires that a percentage of the tax increment collected be set aside for affordable housing. And while not addressed in this volume of the Public Law Journal, the state Legislature has recognized that local zoning regulations can frustrate affordable housing development and requires through General Plan Law that each local planning agency has a housing element in its general plan that permits and removes obstacles from the development of housing for all income levels. Placing properties in receivership is an important tool used by public entities for the preservation and rehabilitation of existing housing stock. This spring's Public Law Journal offers an MCLE article by Catherine A. Rodman, Esq., on "California Community Redevelopment Law & Affordable Housing." Robert C. Pearman, Jr., Esq., has authored an article on "The Use of the Health and Safety Code Receivership Remedy for Substandard Residential Buildings-Promises and Pitfalls." For an update on pending state legislation affecting public entities, see Fazle-Rab Quadri, Esq.'s, and Brenda Aguilar-Guerrero, Esq.'s column, "2002 Legislative Report."

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